

REGULATING 5G INSTALLATIONS

A LOCAL GOVERNMENT
PERSPECTIVE

BRADLEY PEASE, PE
CITY OF CARMEL



1. THE TERMS

2. THE LAW

3. THE REGULATION

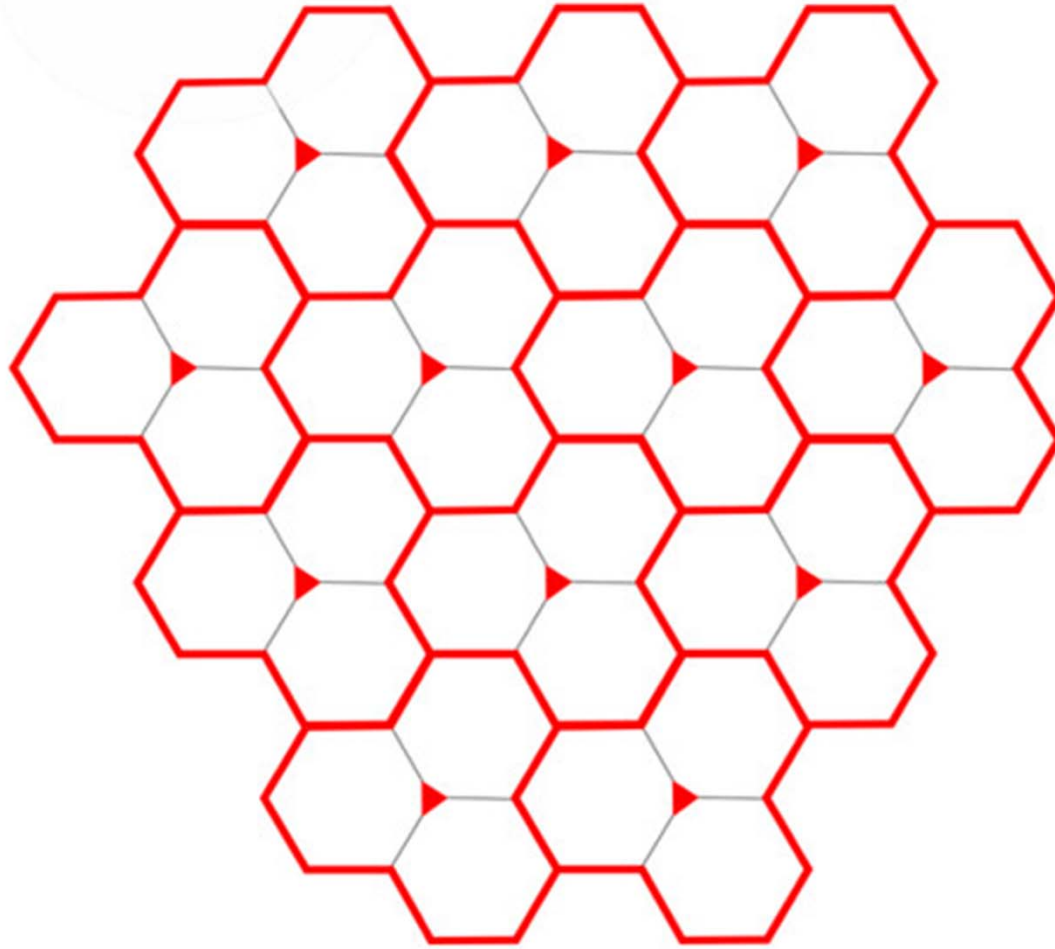
WHAT IS WIRELESS COMMUNICATION?



"I wish he wouldn't yell."



WHAT IS CELLULAR?



WHAT IS 5G?

Gen	Speed	Technologies	Capabilities
1G	1	GSM, TDMA, CDMA	analog, voice only
2G	100	GPRS, EDGE	digital, texts, emails
3G	10,000	UMTS, HSPA+, LTE, EV-DO	video calls, internet
4G	50,000+	LTE-A, OFDMA, WiMAX	gaming, HD video
5G	1,000,000+	NR, beamforming, MIMO	speed, capacity, latency

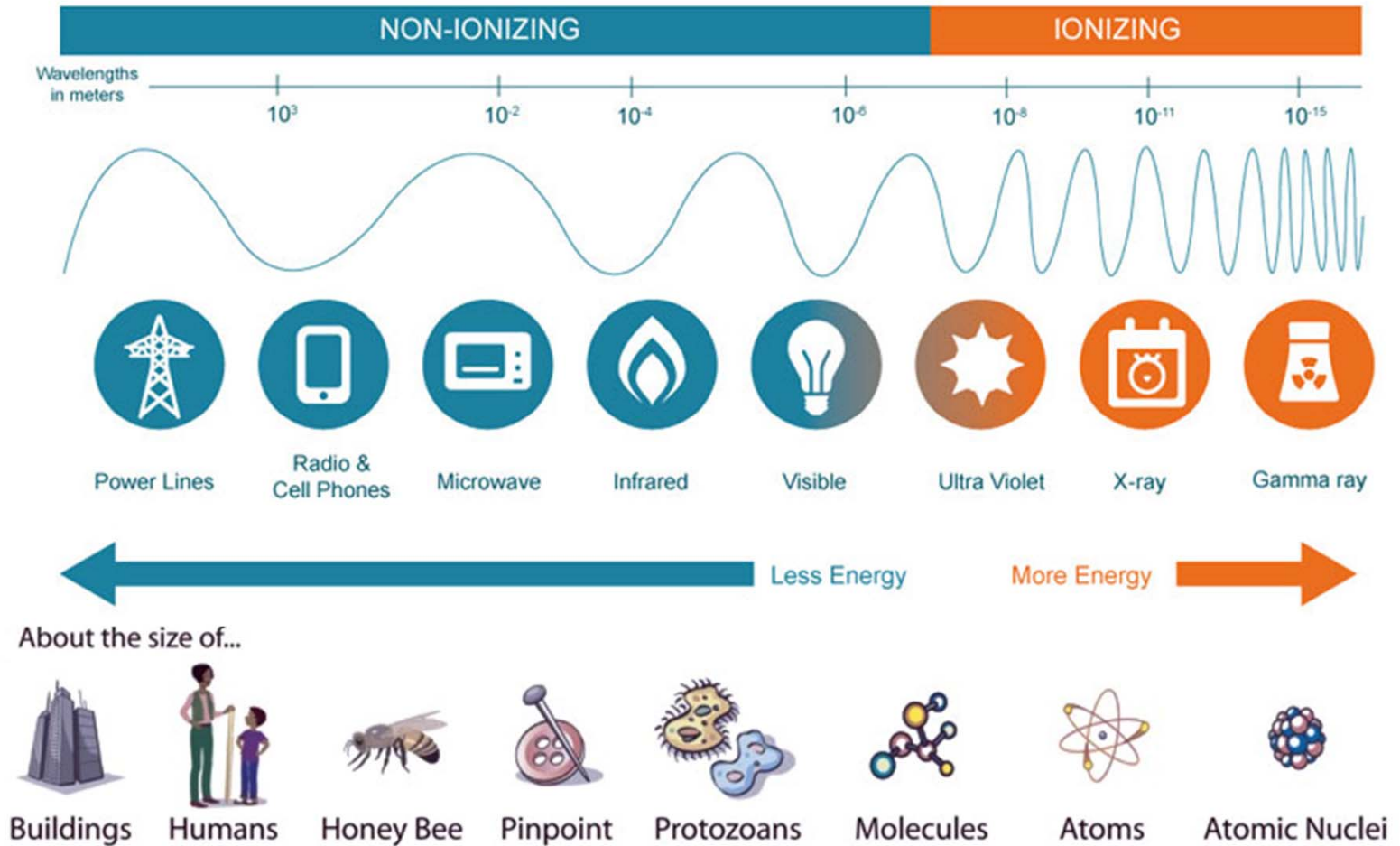


WHAT IS A SMALL CELL?

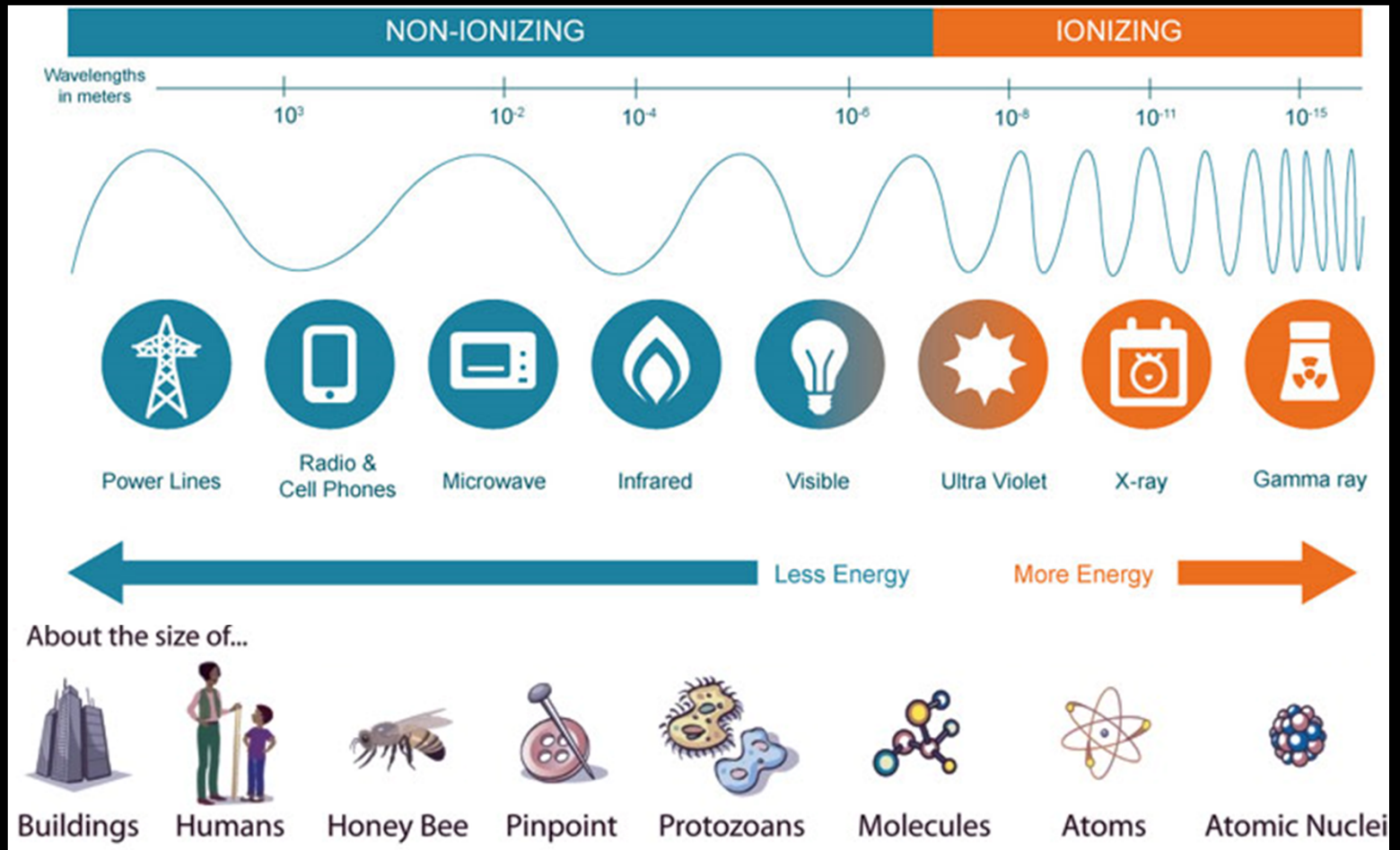
It's a small antenna.



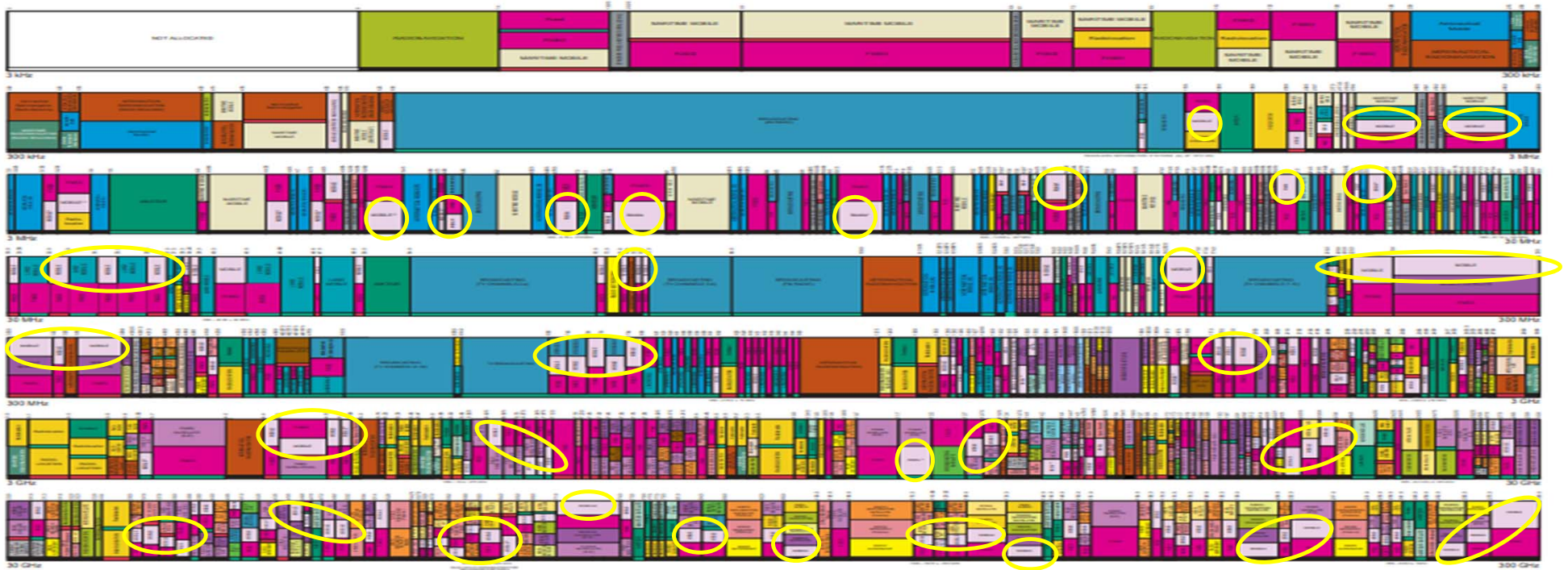
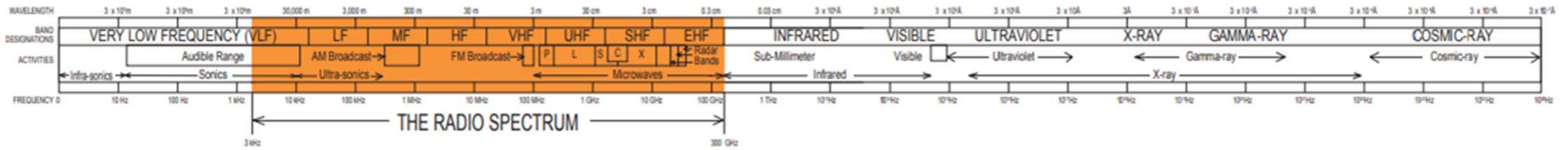
WHAT IS SPECTRUM?



WHAT ARE THE HEALTH IMPACTS?



WHAT IS SPECTRUM?



1. THE TERMS

2. THE LAW

3. THE REGULATION

LOCAL GOVERNMENT POWER

Powers of Cities Act in 1971

“Home Rule” - Local government inherently possesses all powers not constitutionally or statutorily restricted

Home Rule act of 1980

Kole v. Faultless (2012): “[A] [local government] unit is presumed to possess broad powers of local government, unless the Indiana Constitution or a statute expressly denies the unit that power, or expressly grants it to another entity.”

Indiana Code §36-1-3

Indiana’s codified Home Rule statute.

PREEMPTION

pre·emp·tion

/ˌprēˈem(p)SH(ə)n/

noun

3b: a doctrine in law according to which a superior government supersedes an inferior government when the superior government's law is in conflict with an inferior government's law

“...we have long recognized that state laws that conflict with federal law are *without effect*.” *Maryland v. Louisiana*, 451 U. S. 725, 746 (1981)

HOW IS NEPA INVOLVED?

United Keetoowah v. FCC

August 9, 2019

D.C. Circuit Court of Appeals

SIDE NOTE

STATE PREEMPTION

2017 Indiana Senate Bill No. 213

Amendment added on **April 25, 2017**, adds to

SECTION 8. IC 8-1-32.3-15

(c) With respect to the construction, placement, or use of a small cell facility and the associated supporting structure, a permit authority may prohibit the placement of a new utility pole or a new wireless support structure in a right-of-way within an area that is designated strictly for underground or buried utilities, if all of the following apply:

- (1) The area is designated strictly for underground or buried utilities before **May 1, 2017**.

CITY RESPONSE TO STATE PREEMPTION

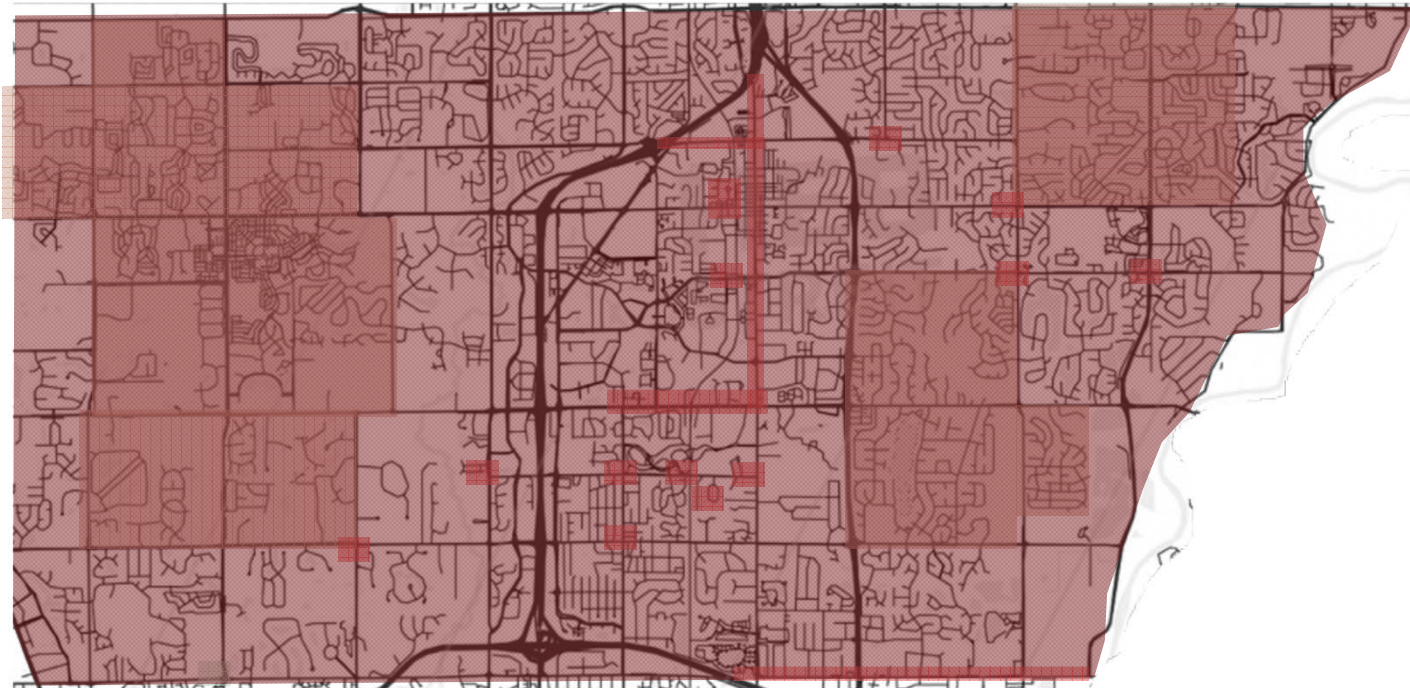
BPW Resolution 4-25-17
4-28-17-01
5-01-17

§ 6-245 Underground and Buried Utilities District.

(a) An Underground and Buried Utilities District (the "District") has been established by the BPW on April 28, 2017 and is effective April 30, 2017, and such District applies throughout the City's ROW and granted utility easements. The District consists of the following:

CITY RESPONSE TO STATE PREEMPTION

BPW Resolution 4-28-17-01



STATE PREEMPTION, ROUND 2

2018 Indiana House Bill No. 1050

Amendment added on March 8, 2018, adds the following to

SECTION 8. IC 8-1-32.3-15:

(g) A resolution, ordinance, or other regulation:

**(1) adopted by a permit authority after April 14, 2017, and before May 2, 2017;
and**

(2) that designates an area within the jurisdiction of the permit authority as strictly for underground or buried utilities; applies only to communications service providers and those geographic areas that are zoned residential and where all existing utility infrastructure is already buried.

CITY RESPONSE, ROUND 2?

BPW Resolution 4-28-17-01

WHEREAS, pursuant to I.C. 36-7-4-510(b) on May 20, 2009, the Carmel Advisory Plan 18 Commission approved Resolution CC-05-04-09-02 adopting the Carmel Clay Comprehensive Plan (“C3 Plan 2009”), as Amended by the Council; and

WHEREAS, the C3 Plan 2009 encouraged all new utilities that supply electric, communication or similar and associated services in newly developed or redeveloped urban areas be placed underground and buried within the City’s rights-of-way (“ROW”); and

DOES THE STATE OCCUPY THE FIELD?

pre·emp·tion

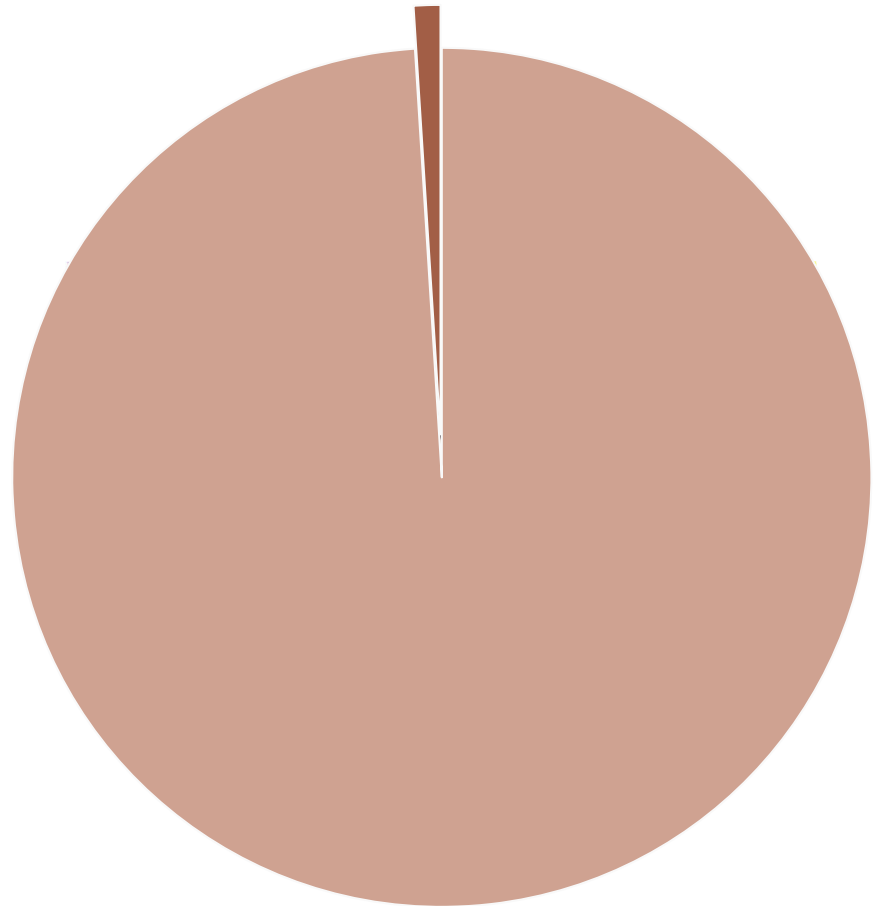
/ˌprēˈem(p)SH(ə)n/

noun

Congress's intent to supplant state authority in a particular field may be "explicitly stated in the statute's language or implicitly contained in its structure and purpose."

FMC Corp. v. Holliday, [498 U.S. 52 \(1990\)](#)

1. when the local ordinance prohibits an act permitted by the state legislature
2. when a local ordinance permits an act prohibited by the state legislature
3. when there is clear legislative intent that the "field" is preempted by state law

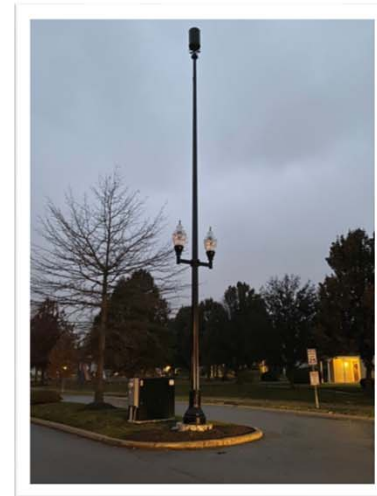
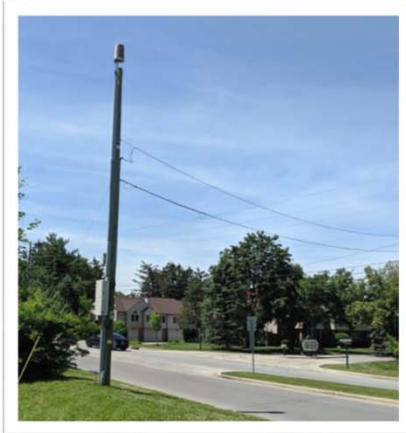
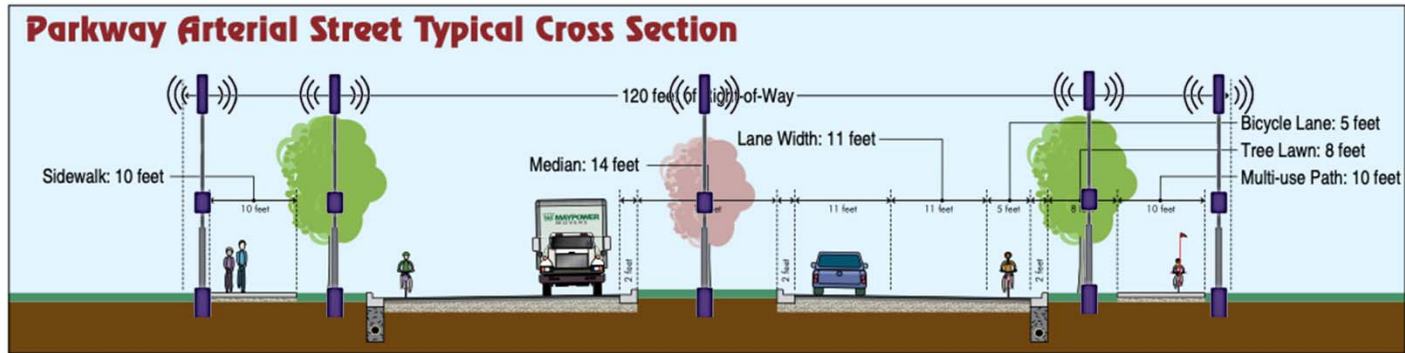


1. THE TERMS

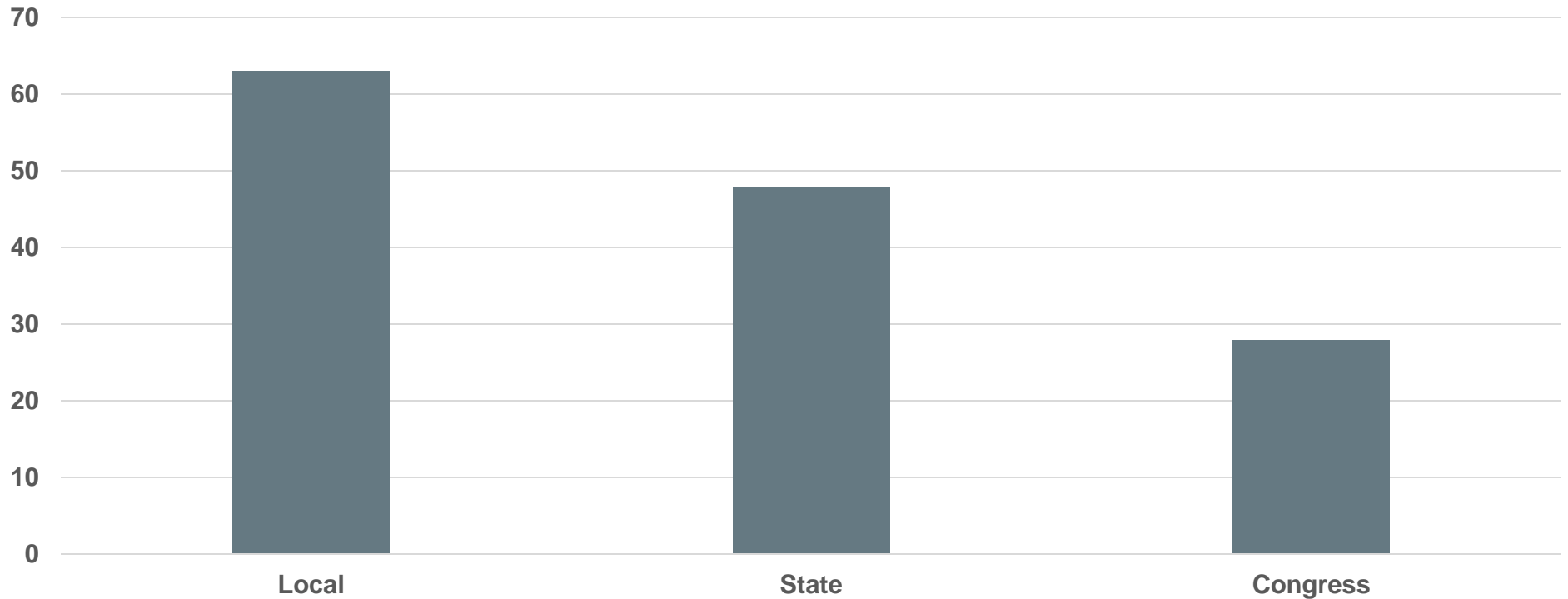
2. THE LAW

3. THE REGULATION

WHY EVEN REGULATE?

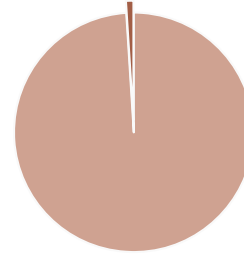


TRUST IN LOCAL GOVERNMENT



57% of Democrats, 58% of Republicans, and 60% of Independents believe local governments are more connected to the community's needs, and can pass policies that reflect the community's values.

WORKING IN THE SLIVER



- **Collocation on existing utility poles and wireless support structures within the Area**
- **Replacement of existing utility poles and wireless support structures within the Area**
- **A waiver process, a zoning process, or another procedure that addresses requests to install new utility poles or new wireless support structures within the Area**

WHAT ARE OUR GOALS?

- **Improved aesthetics that contribute to quality of life**
- **Considering future maintenance and disturbance to the motoring public**
- **Creating win-win situations by adding street lighting in neighborhoods and other public streets**

1. THE TERMS

electromagnetic, 5G
frequency, small cell
mm wave, spectrum

HEALTH

2. THE LAW

Home Rule
Preemption
State Statutes
Local Ordinances

NEPA

3. THE REGULATION

